

STATE OF MICHIGAN
COURT OF APPEALS

AMERIPLUS MORTGAGE CORPORATION,

Plaintiff-Appellant,

v

DMITRY REZNIKOV and AVIVA REZNIKOV,

Defendants-Appellees.

UNPUBLISHED

June 27, 2006

No. 259551

Oakland Circuit Court

LC No. 04-008133-AV

Before: Bandstra, P.J., and Saad and Owens, JJ.

PER CURIAM.

Plaintiff appeals by leave granted an order by the circuit court that reversed the district court's grant of summary disposition in its favor and ordered summary disposition in favor of defendants. We reverse.

Defendants signed a loan agreement in which they agreed that they would not refinance their mortgage or sell their home for a period of 120 days from the date of closing. The loan agreement stated that in the event defendants breached the loan agreement, defendants would reimburse plaintiff for any money paid out because of defendants' breach, "as referenced on both the Good Faith Estimate of Costs to Close and the HUD 1 Settlement Statement (line items 812 & 813)." Defendants also signed a compliance agreement in which they agreed to cooperate with plaintiff if plaintiff needed to adjust the loan documents for any clerical errors. The HUD settlement statement, prepared by Metropolitan Title Company, failed to provide an amount for breach of the loan agreement on lines 812 or 813. However, line 811 of the HUD settlement statement provided for a reimbursement fee, or rather, a "service release premium," to be paid to plaintiff in the amount of \$2,387. Defendants sold their home and paid off their mortgage within 120 days of closing, contrary to the loan agreement.

Plaintiff brought suit to recover the \$2,387 it was required to pay the loan underwriter as a result of defendants' early payoff. The district court found that the loan agreement unambiguously provided defendants would not finance or sell their house for 120 days and, if they did, they would reimburse plaintiff. It then found that the placement of \$2,387 on line 811 rather than line 812 or 813 was a clerical error. It granted plaintiff \$2,387 plus \$86 in costs. Defendants appealed to the circuit court, which, after hearing oral argument, reversed the order of the trial court, and granted summary disposition to defendants.

Plaintiff argues that the circuit court erroneously ruled defendants had no obligation to reimburse it for the pre-payment penalty fees it was forced to pay because of defendants' breach of the loan agreement; it maintains defendants cannot escape their obligation to pay the pre-payment penalty fee merely because the title company inserted the pre-payment penalty fee on the wrong line of the loan document. We agree.

A trial court's grant or denial of a motion for summary disposition is reviewed de novo on appeal. *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan*, 217 Mich App 687, 697-698; 552 NW2d 919 (1996). A trial court's interpretation of an unambiguous contract is likewise subject to de novo review. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003). Our primary goal when interpreting a contract is to determine the parties' intent. *Id.* at 473. If there is clear evidence that the parties reached an agreement but, because of a mutual mistake or a mistake by one party and fraud by the other, the true intent of the parties is not reflected, then courts will reform the document to express the parties' actual intent. *Mate v Wolverine Mut Ins Co*, 233 Mich App 14, 24; 592 NW2d 379 (1998), citing *Olsen v Porter*, 213 Mich App 25, 29; 539 NW2d 523 (1995).

Defendants clearly agreed they would not refinance their mortgage or sell their house within 120 days of closing and, if they did so, they would reimburse plaintiff for the fees incurred. Although the reimbursement fee was listed on the wrong line of the HUD Settlement Statement, the documents clearly indicated the parties' intent that defendants would be responsible for the reimbursement when they entered the loan agreement. The HUD Settlement Statement does not reflect the true intent of the parties, and this Court may reform the agreement to reflect their true intent. *Mate, supra*. Therefore, the circuit court's order is reversed, and the district court's grant of summary disposition to plaintiff is reinstated. Because of our disposition on this issue, we decline to address plaintiff's remaining arguments.

Reversed.

/s/ Richard A. Bandstra
/s/ Henry William Saad
/s/ Donald S. Owens